

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2405.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF GIN; MISBRANDING OF BENEDITTINA; MISBRANDING OF FERNET-EXTRA.

At a stated term of the District Court of the United States for the Northern District of California, begun and held at the city of San Francisco on the first Monday in March, 1912, the grand jurors of the United States within and for said district, acting upon a report by the Secretary of Agriculture, returned an indictment against Bertin & Lepori, a corporation, San Francisco, Cal., alleging shipment by said company, in violation of the Food and Drugs Act, on August 2, 1911, from the State of California into the State of Nevada—

(1) Of a quantity of so-called Bordon & Co.'s dry gin which was misbranded. The product was labeled: "Bordon & Co's Dry Gin London Style. The original contents of this package guaranteed under the National Pure Food Law, June 30, 1906, by Bertin & Lepori, Inc."

Misbranding of the product was charged in the indictment for the reason that the labels and the words and impressions thereon were false and misleading, in that said labels and impression would and were calculated to deceive and mislead the purchaser into the belief that the product was manufactured by the firm of Bordon & Co., whereas, in truth and in fact, there is no such firm as Bordon & Co. and the product was manufactured by Bertin & Lepori at San Francisco, Cal. Misbranding was charged for the further reason that said labels and the words and impressions thereon would and were calculated to mislead and deceive the purchaser into the belief that the product was Gordon & Co.'s dry gin, a well-known foreign product, whereas, in truth and in fact, it was a domestic product. Misbranding was charged for the further reason that the labels and words and impressions thereon and the general appearance of the bottle was an imitation of another well-known article having a distinctive name, to wit, Gordon & Co.'s dry gin.

(2) Of a quantity of Benedittina which was misbranded. The product was labeled: "Benedittina Liquer (A D G M) Savart Freres Brand." (Neck label) "Liquor bonus est." (Sticker) "The original contents of this package guaranteed under the National Pure Food Law, June 30, 1906, by Bertin & Lepori, Inc."

Misbranding of the product was charged in the indictment for the reason that the word "Benedittina" used on the bottles is the Italian word for benedictine, and each bottle containing the product was a squat bottle, which is the shape of the bottle in which genuine benedictine is imported into this country; that on the neck of the bottle and blown into the glass was a trade mark seal similar to that borne by the bottles in which genuine benedictine is imported into this country; that the mouth of the bottle bore a seal which was similar to that borne by the bottles in which genuine benedictine is imported into this country; that the bottles bore the label set forth above and the general appearance of the bottles and the seals and labels and impressions thereon were false and misleading, in that said general appearance of the bottles, seals, and labels, and the words and impressions on the labels would and were calculated to deceive and mislead the purchaser into the belief that the product was a foreign product, to wit, genuine benedictine, a liquor manufactured under a secret formula by the monks of Normandy, whereas, in truth and in fact, the product was a domestic product and was manufactured in the United States, and further the so-called Benedittina by and through the labels thereon and the impressions and words upon the labels purported to be a foreign product, to wit, genuine benedictine, which is a liquor manufactured under a secret formula by the monks of Normandy, whereas, in truth and fact, it was an imitation of benedictine manufactured in the United States, and further, the general appearance of the bottles and seals and labels thereon and the words and impressions on said labels would and were calculated to deceive and mislead the purchaser into the belief that the product was genuine benedictine, a well-known foreign product, whereas, in truth and in fact, it was a domestic product, and further, the general appearance of the bottles and seals and labels was an imitation of the genuine appearance of the container, seals, and labels, and the words and impressions on the labels of another well-known article having a distinctive name, to wit, genuine benedictine.

(3) Of a quantity of so-called Fernet-Extra which was misbranded. The product was labeled: (On main label) "Fernet-Extra, Amaro Stomatico Febbrifugo Anticolerico—Approvato da tutte le celebrita' mediche. Raccomandato contro le febbri e il mal di stomaco prodotto da cattiva digestione. Potente ristoratore delle orze e indicatissimo nelle convalescenze eccitando meravigliosamente

l' appetito. Si prendeca tutte l' ore puro e misto all' acque, al Seltz, vino, caffè', vermouthe, ecc., ecc. Aumentare l' uso puando l' effetto non sia pronto. Si trova presso tutti i Caffettieri, Farmacisti, Emporii, etc. Domandare sempre Fernet Extra." (On small label) "Fernet Extra. Guaranty Legend." (On back of bottle) "The original contents of this package guaranteed under the National Pure Food Law, June 30, 1906, by Bertin & Lepori, Inc."

Analysis of a sample of this product by the Bureau of Chemistry of this Department showed it to contain 47.60 per cent of alcohol by volume. Misbranding of the product was charged in the indictment for the reason that the label set forth above and the words and impressions thereon were false and misleading, in that said labels and words would and were calculated to give the purchaser thereof the impression, and to deceive and mislead the purchaser into the belief, that the product was a foreign product, and by and through said labels and words the so-called Fernet-Extra purported to be a foreign product, whereas, in truth and in fact, it was not a foreign product, but was a domestic product and was manufactured within the United States. Misbranding was charged for the further reason that the bottles containing the product failed to bear a statement on the label of the quantity or proportion of alcohol contained therein and a large portion of the product was alcohol.

It was further charged in the indictment that on September 24, 1909, an indictment containing two counts was returned against the defendant in this case, being Criminal Proceeding No. 4711 of said court charging said defendant with the shipment in violation of the Food and Drugs Act on April 28, 1908, from the State of California into the State of Washington, of a quantity of oil which was adulterated, and further that on November 23, 1909, said defendant entered a plea of guilty to the indictment and on November 24, 1909, the court pronounced judgment upon said defendant and sentenced it to pay a fine amounting to \$200.

On December 28, 1912, the defendant company entered a plea of guilty to the indictment in the present proceeding and on December 31, 1912, the court imposed a fine of \$750.

WILLIS L. MOORE,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *March 3, 1913.*